

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOLANDA DANISE BALLINGER,

Defendant-Appellant.

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UNPUBLISHED

January 20, 2005

No. 250906

Wayne Circuit Court

LC No. 02-004307-01

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of assault with intent to rob while armed, MCL 750.89, kidnapping, MCL 750.349, malicious threats to extort money, MCL 750.213, and assault with intent to commit great bodily harm less than murder, MCL 750.84. She was sentenced to 135 months to 30 years in prison for the assault with intent to rob while armed conviction, fifteen to thirty years in prison for the kidnapping conviction, forty months to twenty years in prison for the extortion conviction, and seventy months to ten years in prison for the assault with intent to do great bodily harm less than murder conviction. We affirm.

On March 6, 2002, defendant asked the victim to enter defendant's home in Detroit. Defendant claimed that the victim owed her \$800 for a drug debt, and the victim maintained that her husband had already paid the debt. Defendant continued to ask for money, and the victim continued to deny that she owed defendant money. Defendant called the victim's husband on the telephone and threatened to kill the victim if her husband did not pay defendant. The victim's husband could hear her screaming in the background.

Defendant took the victim into the basement and beat her. She then brought her upstairs and forced her to strip down to her underwear. The victim was not permitted to leave defendant's house, and defendant continued to perform drug transactions in front of the victim, making an example of the victim. Someone kicked the victim down the basement stairs, and defendant continued to beat her with a broomstick and an electrical cord. Defendant also kicked her repeatedly. Two of defendant's associates poured rubbing alcohol on the victim's wounds, and defendant threatened to burn the victim to show others that they should pay their debts. The beatings continued, sometimes on the first floor and sometimes in the basement. At some point, defendant placed a second telephone call to the victim's husband, demanding money and threatening to kill the victim if he did not pay. The victim's husband called the police, who arrived at defendant's house and found the victim in the basement, stripped and beaten. The victim suffered a broken eye socket, cracked ribs, and seizures.

Defendant argues that there was insufficient evidence to sustain her assault with intent to rob while armed conviction. Challenges to the sufficiency of the evidence in criminal trials are reviewed de novo to determine whether, in a light most favorable to the prosecutor, any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Randolph*, 466 Mich 532, 572; 648 NW2d 164 (2002).

The elements of assault with intent to rob while armed are: “(1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant’s being armed.” *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). Because this is a specific-intent crime, “there must be evidence that the defendant intended to rob or steal.” *Id.* Defendant specifically alleges that there was insufficient evidence that she possessed an intent to rob or steal. In order to prove this element, the prosecution must show that at the time of the assault, the defendant intended to permanently take money or property from the victim. It is not necessary for the defendant to actually take any money or property from complainant. *People v Adams*, 128 Mich App 25, 29; 339 NW2d 687 (1983) (“an *attempted* robbery is an essential element of an assault with intent to rob while armed”) (emphasis added).

Defendant asserts that she only intended to extort money from the victim’s husband and that she believed the victim had no money. Defendant maintains that she knew she could not get any money from the victim at the time she assaulted her and that she only took the victim’s clothes to further humiliate the victim and to set an example to others to pay defendant their drug debts. Although defendant’s assertions may have some merit, only minimal circumstantial evidence of intent is necessary to ascertain a defendant’s state of mind. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The evidence established that defendant repeatedly asked for money while she beat the victim. Defendant in fact took the victim’s clothes and did not return them. Thus, the prosecution presented sufficient circumstantial evidence to permit the jury to make the inference that defendant possessed the necessary state of mind. Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found that defendant possessed an intent to rob beyond a reasonable doubt.

Defendant also argues that her constitutional rights were infringed when the trial court failed to instruct the jury on the asportation element of forcible confinement kidnapping. Because defense counsel failed to object to the jury instructions as given, this issue has not been preserved for appellate review. MCR 2.516(C); MCL 768.29; *People v Fletcher*, 260 Mich App 531, 558; 679 NW2d 127 (2004).

Defense counsel’s express approval of a given jury instruction constitutes “a waiver that *extinguishes* any error.” *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000) (emphasis in original). No objections were made to the jury instructions as given. When asked if he was “satisfied with the [jury] charge as given,” defense counsel specifically stated that he was. Because defense counsel expressly approved the jury instructions as given, this issue has been waived and need not be considered by this Court.

Affirmed.

/s/ Hilda R. Gage  
/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood